

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD A. CANNON, JR.,	§	
	§	No. 120, 2012
Defendant Below-	§	
Appellant,	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for Sussex County
STATE OF DELAWARE,	§	Cr. ID Nos. 0801035853
	§	0503002811
Plaintiff Below-	§	0608007385
Appellee.	§	0802007619

Submitted: May 2, 2012

Decided: June 1, 2012

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 1st day of June 2012, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Edward A. Cannon, Jr., filed an appeal from the Superior Court's February 23, 2012 violation of probation ("VOP") sentencing order. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is

manifest on the face of the opening brief that the appeal is without merit.¹

We agree and affirm.

(2) The record before us reflects that, in July 2005, Cannon entered a plea of guilty to two counts of Robbery in the Second Degree. He was sentenced to a total of 10 years at Level V incarceration, to be suspended after successful completion of the Gateway Program for 2 years at Level III probation. Thereafter, Cannon was found to have committed VOPs in January 2006, June 2006 and July 2008. During this period, he was convicted of the additional charges of Robbery in the Second Degree, Misdemeanor Theft, Resisting Arrest and Disregarding a Police Signal.

(3) On February 23, 2012, the Superior Court again found Cannon in violation of his probation. The finding was based upon new convictions as well as technical violations. The Superior Court's VOP sentencing order reflects the following: Cannon was discharged as unimproved for violating the first of his second degree robbery sentences. He was discharged as unimproved for violating his sentence for misdemeanor theft. He was sentenced to 4 years at Level V, to be suspended after successful completion of the Key Program for decreasing levels of supervision, for violating the second of his second degree robbery sentences. He was sentenced to Level

¹ Supr. Ct. R. 25(a).

III probation for violating his sentences for resisting arrest and disregarding a police signal. Finally, Cannon was sentenced to 3 years at Level V, to be suspended for 18 months at Level III probation, for violating the third of his second degree robbery sentences. The sentencing order reflects that this last sentence was intended to account for all the Level V time Cannon had previously served.

(4) In his appeal from the Superior Court's February 23, 2012 VOP sentencing order, Cannon asserts several claims, which may fairly be summarized as follows: a) his violations should have been considered by the Board of Parole, not the Superior Court, because he was on conditional release; b) there was insufficient evidence presented to support the violations; c) the Superior Court abused its discretion by failing to consider mitigating circumstances such as his ill health and recent employment; d) his sentence is inappropriately harsh; e) his sentence violates principles of double jeopardy; and f) his counsel provided ineffective assistance at the VOP hearing.

(5) None of Cannon's claims has merit. As to his first claim, while an offender on conditional release remains under the authority of the Board of Parole on a charge of violating the terms of his release,² the Superior

² Del. Code Ann. tit. 11, §4352.

Court nevertheless has jurisdiction over a VOP committed by the offender and may revoke the offender's unexecuted probation and impose sentence.³ As to Cannon's claims of error and abuse of discretion at the VOP hearing, he has failed to provide this Court with a transcript of the VOP proceedings. As such, we are lacking the necessary record to evaluate those claims, precluding appellate review.⁴ Cannon's claims of error with respect to his VOP sentence are likewise without merit. His sentences are within the statutory maximum⁵ and do not implicate double jeopardy.⁶ As for Cannon's ineffective assistance of counsel claim, assuming that Cannon has the right to pursue it,⁷ this Court will not consider such a claim for the first time on direct appeal.⁸

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

³ Del. Code Ann. tit. 11, §4333(a); *Austin v. State*, No. 697, 2010, Holland, J. (June 20, 2011).

⁴ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987); Supr. Ct. R. 9(e) (ii) and 14(e).

⁵ *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989).

⁶ *Williams v. State*, 796 A.2d 1281, 1284-85 (Del. 2002).

⁷ *McGeehan v. State*, Del. Supr., No. 145, 2006, Holland, J. (Oct. 16, 2006).

⁸ *Duross v. State*, 494 A.2d 1265, 1267 (Del. 1985).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice